

UNITED STATES BANKRUPTCY COURT
NORTHERN DISTRICT OF CALIFORNIA

In re Case Nos. 04-53803-JRG and
CANDESCENT TECHNOLOGIES 04-53808-JRG
CORPORATION, a California (Jointly Administered)
Corporation,
Debtor, Chapter 11

ORDER ON FINAL FEE APPLICATION OF
AKIN GUMP STRAUSS HAUER & FELD LLP

I. INTRODUCTION

Through its final fee application, counsel for the creditors' committee, Akin Gump Strauss Hauer & Feld LLP (AGSH&F), seeks final approval of \$343,571.00 in fees and \$17,728.25 in expenses for the period from June 16, 2004 through June 27, 2005. On July 1, 2005, the court ordered an audit of the AGSH&F fee request. Having reviewed the audit report and the comments of AGSH&F, the request for final approval of fees and expenses is granted in part and denied in part as herein stated.

II. BACKGROUND

The debtors filed for bankruptcy on June 16, 2004. The cases

1 were relatively straightforward. Substantially all of the debtors'
2 assets were sold on August 12, 2004 pursuant to an asset purchase
3 agreement entered into pre-petition. A joint plan of reorganization
4 was filed on January 26, 2005 and the joint second amended plan of
5 reorganization was confirmed on June 16, 2005. The confirmed plan was
6 a liquidating plan that allocated the cash between the debtors and
7 distributed that cash in accordance with the priorities of the
8 Bankruptcy Code.

9 **III. FEES**

10 Prior to the submission of the final fee application, the court
11 approved on an interim basis AGSH&F's first fee application in the
12 amount of \$160,317.00 in fees and \$6,904.02 in expenses. The court
13 took under submission approval of AGSH&F's second interim fee
14 application in the amount of \$95,228.00 in fees and \$5,846.83 in
15 expenses. By way of its final application, AGSH&F seeks an additional
16 \$84,582.00 in fees and \$4,977.40 in expenses. The total fees and
17 expenses for which AGSH&F seeks final approval are \$343,571.00 in fees
18 and \$17,728.25 in expenses for the period from June 16, 2004 through
19 June 27, 2005.

20 The audit report was submitted to the court on October 6, 2005.
21 The court gave interested parties an opportunity to respond to the
22 audit. The court received a response from AGSH&F, which sought to
23 clarify and explain aspects of the audit report. The audit reveals
24 a difference of \$2,443.00 in fees and \$28.11 in expenses between the
25 requested amount and the computed amount. The discrepancy is a result
26 of the activity hours not equaling the entry hours and computational
27 error. [See "Recomputation of Fees and Expenses," page 2; Exhibit A.]
28 AGSH&F acknowledges that certain categories of fees questioned by the

1 audit report are appropriate to delete. These fees total \$2,744.50
2 and include the following categories and amounts:

- 3 • task entry hours exceeding individual components of the
4 time entries in the amount of \$2,443.00 [See Exhibit A];
- 5 • potential double billing in the amount of \$187.50 [See
6 Exhibit B];
- 7 • administrative/clerical activities of Patrick Ivie in the
8 amount of \$114.00 [See Exhibit H];

9 AGSH&F further agrees to reduce its expenses by a total of \$652.11 and
10 requests an award of \$340,826.50 in fees and \$17,076.14 in expenses.

11 In relation to the remaining fees, the court has a duty to review
12 each request and determine whether the requirements of Bankruptcy Code
13 § 330 are met. In re Busy Beaver Bldg. Ctrs., Inc., 19 F.3d 833, 840-
14 45 (3rd Cir. 1994); In re Berg, 268 B.R. 250, 257 (Bankr. D. Mont.
15 2001). Section 330 of the Bankruptcy Code provides that the court may
16 award to a professional person employed under §§ 327 or 1103
17 reasonable compensation for actual, necessary services rendered and
18 reimbursement of actual, necessary expenses. In determining the
19 amount of reasonable compensation, the court considers the nature, the
20 extent, and the value of such services, taking into account all
21 relevant factors. 11 U.S.C. § 330(a)(3). Where some of the services
22 provided were not likely to benefit the estate or were not necessary,
23 the court may award less compensation than requested. In re Smith,
24 317 F.3d 918, 926 (9th Cir. 2002).

25 In reviewing the audit report and response of AGSH&F, the court
26 concludes the following.

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1 **A. Fees Related to the Preparation of Fee Applications Will Be**
2 **Reduced.**

3 The Bankruptcy Court for the Northern District of California
4 maintains Guidelines for Compensation of Professionals.¹ The audit
5 report highlights \$31,760.00 in fees that were related to the
6 retention and compensation of AGSH&F. [See Exhibit M-1.] Under
7 Guideline 6:

- 8 6. Preparation of Application - Reasonable fees for
9 preparation of a fee application may be requested. Fees for
10 preparation of a fee application **may not exceed five**
11 **percent** of the total amount of fees and costs requested in
12 the application. This five percent guideline is a ceiling
13 rather than a floor; preparation expenses equaling five
14 percent are not presumptively reasonable. The aggregate
number of hours spent, the amount requested and the
percentage of the total request which the amount represents
must be disclosed. If the actual time spent will be
reflected and charged in a future fee application, this
fact should be stated but an estimate nevertheless
provided. (Emphasis in original.)

15 In its response, AGSH&F asserts that these fees were incurred for
16 the actual, necessary, unavoidable and reasonable services provided
17 to the committee and should be allowed.

18 The court has reviewed all three fee applications and notes that
19 with respect to the second and final fee applications, the amount of
20 fees sought for preparation of the fee application exceeds 5% of the
21 fees requested. In the second fee application, AGSH&F sought
22 \$95,228.00 in fees and allocated \$7,892.00 for Akin Gump Retention and
23 Fee Applications.² Five percent of the requested fees totals
24 \$4,761.40. In the third fee application, AGSH&F sought \$84,582.00 in

25 ¹ The District's Guidelines for Compensation and Expense Reimbursement of Professionals
26 and Trustees are available on the District's Web site at <http://www.canb.uscourts.gov>.

27 ² Since AGSH&F was employed by court order filed September 20, 2004, the court assumes
28 that the fees allocated to Akin Gump Retention and Fee Applications category in the second
and final fee applications relate solely to the preparation of fee applications.

1 fees and allocated \$10,082.50 for Akin Gump Retention and Fee
2 Applications. Five percent of the requested fees totals \$4,229.10.
3 Thus, the fees for preparation of the second fee application exceed
4 the 5% limit by \$3,130.60 and the fees for preparation of the final
5 fee application exceed the 5% limit by \$5,853.40. As a result, the
6 court denies \$8,984.00 in fees.

7
8 **B. Administrative/Clerical Activities by Paraprofessionals and
Professionals Warrant Fee Reductions.**

9 The audit report highlights a number of activities that appear
10 to be clerical in nature. [See Exhibit H.] According to Guideline 18:

11 18. Administrative Tasks - Time spent in addressing, stamping
12 and stuffing envelopes, filing, photocopying or
13 "supervising" any of the foregoing is not compensable,
whether performed by a professional, paraprofessional or
secretary.

14 AGSH&F's employment and retention is to be in accordance with
15 § 330 of the Bankruptcy Code and the local guidelines of the court.
16 Clerical services are overhead expenses and are not compensable under
17 § 330(a). Sousa v. Miquel (In re United States Trustee), 32 F.3d
18 1370, 1374 (9th Cir. 1994). Services such as filing, assembling or
19 compiling documents, organizing files, calendaring dates, making
20 copies, faxing or transmitting, moving records, to name a few, are
21 inherently clerical.

22 AGSH&F's response in that the tasks performed were actual,
23 necessary, unavoidable and reasonable services for a paraprofessional
24 to perform and should be allowed.

25 However, a review of the time entries discloses some entries that
26 are clerical in nature, for example, calendaring dates [see Exhibit H:
27 10/20/04, 12/6/04 Woods] and organizing documents into folders [see
28 Exhibit H: 10/26/04 Woods]. A large portion of the entries are for

1 reviewing and downloading the court docket and certain documents. The
2 court finds that these tasks are administrative and not compensable.
3 Because many of the entries in Exhibit H are clerical or
4 administrative, the court will reduce the fees for this category by
5 50%. After taking into account the voluntary reduction for the fees
6 of Mr. Ivie, the court reduces the fees by \$2,271.75.

7 **C. Reduction in Fees for Airplane Travel Time Is Warranted.**

8 The audit report highlights certain nonworking travel entries.
9 [See Exhibit G.] According to Guideline 17:

10 17. Airplane Travel Time - Airplane travel time is not
11 compensable, but work actually done during a flight is
12 compensable. If significant airplane travel time is
expected in a case, specific guidelines should be obtained
for that case.

13 In its response, AGSH&F states that it is the firm's billing
14 practice to charge travel time at half-time and all entries are so
15 billed. However, the Guidelines do not permit charging the estate for
16 airplane travel time, even at half-time. Reviewing the entries on
17 Exhibit G, all entries appear to bill the estate for airplane travel
18 time in violation of the Guidelines. The court denies \$23,092.50 in
19 fees as airplane travel time.

20 **D. All Other Fees Requested Are Approved.**

21 The court has reviewed the remaining fee categories outlined in
22 the audit report and concludes that no further reductions are
23 warranted. The court denies a total of \$34,348.25 in requested fees.

24 **IV. EXPENSES**

25 As for expenses, in the final application AGSH&F seeks
26 reimbursement for \$17,728.25 in expenses. The audit report states
27 that a recomputation of the expense request reveals a \$28.11
28 discrepancy in the amount requested and the amount computed by the

1 auditor.

2 The court has reviewed the expense categories outlined in the
3 audit report and concludes that no reductions are warranted beyond
4 those voluntarily reduced by AGSH&F.

5 **V. CONCLUSION**

6 The court approves on a final basis fees in the amount of
7 \$306,478.25, having denied \$34,348.25 in fees. Expense reimbursement
8 is approved in the amount of \$17,076.14, the court having allowed all
9 expenses after the voluntary waiver by AGSH&F. Total fees and
10 expenses approved on a final basis are \$323,554.39. All fees that are
11 denied are done so on a final basis.

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13 DATED: _____
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16 JAMES R. GRUBE
UNITED STATES BANKRUPTCY JUDGE
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Case Nos. 04-53803-JRG and 04-53808-JRG
(Jointly Administered)

UNITED STATES BANKRUPTCY COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA

CERTIFICATE OF SERVICE

I, the undersigned, a regularly appointed and qualified Judicial Assistant in the office of the Bankruptcy Judges of the United States Bankruptcy Court for the Northern District of California, San Jose, California hereby certify:

That I, in the performance of my duties as such Judicial Assistant, served a copy of the Court's: ORDER ON FINAL FEE APPLICATION OF AKIN GUMP STRAUSS HAUER & FELD LLP by placing it in the United States Mail, First Class, postage prepaid, at San Jose, California on the date shown below, in a sealed envelope addressed as listed below.

I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct.

Executed on _____ at San Jose, California.

LISA OLSEN

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